

INTRODUCTION TO APPROVED LOANS**OVERVIEW****In This Section**

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**LOAN FILE
REVIEW
PROCEDURES**

The following procedures have been designed to assist examiners in conducting the loan file review process. Utilizing the procedures as they are presented should enable the examiner to review for compliance with all applicable regulations with just a single review of each file.

The procedures are segregated by the various time frames associated with regulation requirements, for example: at application, within three business days of application, etc., and then by regulation. The procedures are written for the most common open-end and closed-end types of credit reviewed; however, the procedures can be utilized for other types of loans such as second or vacation homes. The examiner must determine which regulations are applicable to the particular loan type and proceed accordingly.

Refer to the Reference Guide located at the end of each section for applicable regulations.

The procedures are to be followed in reviewing loan files in all instances. The examiner must ensure that all loan types applicable to the subject financial institution are included in the loan file review. The procedures are designed to provide guidance in determining a financial institution's compliance with applicable regulations. The procedures are comprehensive and should serve as a good training tool for assistant examiners; however, the procedures are not designed to take the place of the written regulations and commentaries, which should be referenced when necessary.

**LOAN FILE
REVIEW
PROCEDURES
(cont'd)**

Examiners should consider the applicability of state laws when conducting a loan file review and are expected to be knowledgeable of state laws when appropriate. Notations are in the regulations and related acts within the FDIC Rules and Regulations (three volume set) when state laws take precedence.

**REGULATION
OVERVIEW**

The following rules and regulations will be addressed within the Approved Loans and Loan Related Regulation sections of the manual. These comments are given to supply the examiner with a general explanation and purpose of the rule or regulation. Specific requirements are discussed and listed within the applicable sections.

**Credit Practices
Rule, Subpart B,
Regulation AA
(CPR)**

The Credit Practices Rule, contained in Subpart B of the Federal Reserve Board's Regulation AA, was adopted to prohibit certain unfair and deceptive credit practices described below in the examination procedures. The prohibitions contained in the Rule apply to all credit contracts originated or purchased by financial institutions other than those for the purchase of real estate.

The regulatory references in this section are to Subpart B of the Federal Reserve Board's Regulation AA, 12 C.F.R. Sections 227.11-16.

NOTE: Scoping procedures should be used to the greatest extent possible when considering review of CPR. Refer to Policy #4 of DCA Memorandum 6410.14, dated 01-26-98, titled "Risk Management Priorities."

**Equal Credit
Opportunity Act
(ECOA)**

The Equal Credit Opportunity Act (ECOA), 15 U.S.C. 1691, is implemented by the Federal Reserve Board's Regulation B, Equal Credit Opportunity.

Regulation B prohibits discrimination in any aspect of a credit transaction on the basis of race, color, religion, national origin, sex, marital status, age (provided that the applicant has the capacity to enter into a binding contract), receipt of income from a public assistance program, and the good faith exercise of any right under the Consumer Credit Protection Act. These factors are referred to throughout the regulation as "prohibited bases."

Regulation B deals with taking, evaluating and acting on applications for credit accounts and the furnishing and maintenance of credit information. It does not prevent a creditor from obtaining information necessary to evaluate the creditworthiness of an applicant.

The regulatory references in this section are to Regulation B, 12 C.F.R. Part 202.

**REGULATION
OVERVIEW
(cont'd)**

**Fair Credit
Reporting Act
(FCRA)**

The Fair Credit Reporting Act (FCRA) was designed to:

- Regulate the consumer reporting industry
- Place disclosure requirements on users of credit reports
- Ensure fair, timely, and accurate reporting of credit information

The FCRA also:

- Restricts the use of reports on consumers
- Requires, in certain situations, the deletion of obsolete information from a consumer's credit report

Financial institutions are likely to be subject to FCRA as users of information obtained from credit reporting agencies. In addition, certain institutions function as consumer reporting agencies, and to the extent that they issue consumer reports, are subject to FCRA.

The statutory references in this section are to the sections of the FCRA as they appear in Title VI of the Consumer Credit Protection Act, Consumer Credit Reporting.

*NOTE: Reviews for compliance with the FCRA **cannot** be conducted on a routine basis. The review must be in response to a complaint or if the FDIC otherwise has knowledge that a financial institution has violated the FCRA. For further guidance, refer to DCA Transmittal No. 98-004, dated 3-05-98, entitled, "Further Guidance on FCRA."*

**Fair Housing,
Part 338 of the
FDIC's Rules
and Regulations
(FH)**

The purpose of Part 338 of the FDIC's Regulations, Fair Housing, is two-fold:

- Provide guidance on nondiscriminatory advertising for loans made for the purpose of purchasing, constructing, improving, repairing or maintaining a dwelling or for any loan secured by a dwelling; and
- Further enforce certain data collection and record-keeping requirements for home loans applicants and applications required by the Federal Reserve Board's Regulations B and C.

The regulatory references in this section are to Fair Housing, 12 C.F.R. Part 338.

**Flood Insurance,
Part 339 of the
FDIC's Rules
and Regulations
(FI)**

The Flood Disaster Protection Act of 1973 (FDPA) (42 U.S.C. 4001-4129) prohibits federally regulated financial institutions from making, increasing, extending or renewing any designated loan (applicability of the FDPA is not limited to consumer loans) determined by the Director of the Federal Emergency Management Agency (FEMA) to have special flood hazards unless the building or mobile home and any personal property securing the loan is covered by flood insurance for the term of the loan. A designated loan is one which is secured by a building or mobile home that is located or to be located in a special flood hazard area in which flood insurance is available.

**REGULATION
OVERVIEW**

(cont'd)

**Flood Insurance,
Part 339 of the
FDIC's Rules
and Regulations
(FI) (cont'd)**

The principal objectives of the FDPA are to:

- Ensure that flood insurance is available at reasonable costs
- Reduce or avoid future flood losses and provide a preventive alternative to massive doses of federal disaster relief funds normally made available to flood stricken areas

NOTE: Scoping procedures should be used to the greatest extent possible when considering review of FI. Refer to Policy #4 of DCA Memorandum 6410.14, dated 01-26-98, titled "Risk Management Priorities."

**Home Mortgage
Disclosure Act
(HMDA)**

The purpose of the Home Mortgage Disclosure Act (HMDA) is to make information and data about an institution's home mortgage lending available to the public. HMDA requires covered institutions to compile and disclose data about the home mortgage applications they receive and the home purchase and improvement loans (including refinancing of such loans) they make or purchase. Specifically, HMDA requires that institutions report certain data about each application or loan, such as the location of the subject property, and the race or national origin, sex, and gross annual income of the applicant.

The regulatory references in this section are to the Federal Reserve Board's Regulation C, Home Mortgage Disclosure, 12 C.F.R. Part 203, HMDA's implementing regulation.

NOTE: The benchmark for HMDA data collection is subject to adjustment annually to reflect future changes in the Consumers Price Index for Urban Wage Earners and Clerical Workers (CPIW). The Federal Reserve Board will publish the benchmark in the Federal Register on an annual basis.

**Preservation of
Consumers'
Claims and
Defenses (PCCD)**

The purpose of the Federal Trade Commission's (FTC) rule concerning the Preservation of Consumers' Claims and Defenses (16 C.F.R. Part 433) is to ensure that consumer credit contracts used in financing the retail purchase of consumer goods or services specifically preserve the consumer's rights against the seller. The FTC determined that it constitutes an unfair and deceptive practice for a seller, in the course of financing a consumer purchase of goods or services, to employ procedures which make the consumer's duty to pay independent of the seller's duty to fulfill its obligations.

The Rule, sometimes called the Holder-in-Due-Course Rule, became effective May 14, 1976.

NOTE: Scoping procedures should be used to the greatest extent possible when considering review of PCCD. Refer to Policy #4 of DCA Memorandum 6410.14, dated 01-26-98, titled "Risk Management Priorities."

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    Q1[Does the sale involve a consumer good or service, not for commercial use?] -- Yes --> Q2[Does the sale involve real property, commodities, or securities?]
    Q1 -- No --> Q3[Does the sale involve an expenditure of more than $25,000?]
    Q2 -- Yes --> Q4[Does the agreement constitute a contract under the laws of the local jurisdiction?]
    Q2 -- No --> PCCD1[PCCD does not apply]
    Q3 -- Yes --> Q4
    Q3 -- No --> PCCD1
    Q4 -- Yes --> Q5[Does the contract appear to be a lease agreement?]
    Q4 -- No --> PCCD1
    Q5 -- Yes --> Q6[Does the apparent lease constitute a credit sale agreement under Regulation Z?]
    Q5 -- No --> PCCD1
    Q6 -- Yes --> Q7[Was the contract purchased by the financial institution?]
    Q6 -- No --> Q8[Is the contract a credit card instrument?]
    Q7 -- Yes --> Q9[Does the contract contain the notice set forth in Section 433.2(a)?]
    Q7 -- No --> Q10[Is this a purchase money loan?]
    Q8 -- Yes --> Q9
    Q8 -- No --> Q10
    Q9 -- Yes --> Q11[Does the contract contain the notice set forth in Section 433.2(b)?]
    Q9 -- No --> Cite2[Cite violation of Section 433.2 (a) (Code 260101)]
    Q11 -- Yes --> Q12[Is the seller referral an established pattern?]
    Q11 -- No --> PCCD2[PCCD does not apply]
    Q12 -- Yes --> Q13[Did the customer obtain financing from the lender through seller referral?]
    Q12 -- No --> PCCD2
    Q13 -- Yes --> Q14[Is the lender affiliated with the seller by common controls, contract, or business arrangement?]
    Q13 -- No --> PCCD2
    Q14 -- Yes --> Q15[Does the contract contain the Notice set forth in Section 433.2(b)?]
    Q14 -- No --> Cite3[Cite violation of Section 433.2 (b) (Code 260301)]
    Q15 -- Yes --> Q16[Are required provisions of the Notice in bold face type?]
    Q15 -- No --> Cite3
    Q16 -- Yes --> Q17[Are required provisions of the Notice in ten point type?]
    Q16 -- No --> Cite1[Cite violation of Section 433.2(a) (Code 260101) or 433.2(b) (Code 260301) depending on which notice you are reviewing.]
    Q17 -- Yes --> Q18[Is the Notice clearly a part of the sale contract?]
    Q17 -- No --> Cite1
    Q18 -- Yes --> Q19[Does the Notice appear without any qualifications?]
    Q18 -- No --> Cite1
    Q19 -- Yes --> Q20[Bank is in compliance with PCCD.]
    Q19 -- No --> Cite1
    Q20 -- Yes --> Cite3
    Q20 -- No --> Cite1
    
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**REGULATION
OVERVIEW
(cont'd)**

**Real Estate
Settlement
Procedures Act
(RESPA)**

The purpose of the Real Estate Settlement Procedures Act (RESPA) is to provide borrowers with pertinent and timely disclosures regarding the nature and costs of the real estate settlement process. RESPA also protects borrowers against certain abusive practices, such as kickbacks, and places limitations on the use of escrow accounts. RESPA further requires detailed disclosures concerning the transfer, sale, or assignment of mortgage servicing and concerning mortgage escrow accounts at closing and annually.

The regulatory references in this section are to the Department of Housing and Urban Development's Regulation X, Real Estate Settlement Procedures, 24 C.F.R. Part 3500, RESPA's implementing regulation.

**Truth in
Lending Act
(TIL)**

The purpose of the Truth in Lending Act (TIL) is to provide a meaningful disclosure of credit terms so that consumers will be able to compare more readily the various terms available and avoid the uninformed use of credit. It also protects the consumer against inaccurate and unfair credit card billing practices.

The regulatory references cited in this section are to the Federal Reserve Board's Regulation Z, Truth in Lending, 12 C.F.R. Part 226, TIL's implementing regulation.

TIL-Regulation Z is applicable in most every instance involving both open-end and closed-end credit transactions. Specific loan file review procedures determining compliance with TIL-Regulation Z are detailed within this Approved Loan section of the manual and also the Loan Related Regulations section of the manual. The following procedures, however, are general in nature and apply in all transactions where TIL-Regulation Z is applicable, regardless of whether the transaction is an open-end or closed-end credit.

NOTE: TIL Staff Commentary contains additional information which provides clarification of the regulation. The Staff Commentary should always be referenced when checking a financial institution's compliance with Regulation Z.

**General Truth
in Lending
(TIL)
Procedures**

General Truth in Lending Procedures	
1.	Determine the types of consumer credit (open-end and closed-end, direct and indirect) offered by the financial institution and the terms applicable to each.
2.	Determine which individuals perform the various functions necessary to comply with the different provisions of Regulation Z. For example, identify personnel engaged in: <ul style="list-style-type: none"> Completing disclosure statements

**REGULATION
OVERVIEW
(cont'd)**

**General Truth
in Lending
(TIL)
Procedures
(cont'd)**

- Calculating the numeric disclosures
- Completing and furnishing rescission notices
- Preparing advertising copy for consumer credit
- Responding to public inquiries (by telephone or otherwise) about the cost and terms of consumer credit

3. Determine the extent and adequacy of the instructions and training received by those individuals to enable them to perform their assigned responsibilities in conformity with Regulation Z.

4. Obtain and review any written directives and training materials pertaining to individual financial institution employee responsibilities for assuring compliance with Regulation Z.

5. Determine the extent to which (if any) the financial institution's policies, procedures and practices are monitored or periodically reviewed by internal or external auditors, or other staff, to assess results and assure continued compliance with Regulation Z.

Coverage Considerations under Regulation Z

